

File No. 110222

Committee Item No. 2

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date April 18, 2011

Board of Supervisors Meeting Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Environmental Review Determination, dtd 3/16/11</u> |
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Completed by: Alisa Somera Date April 15, 2011

Completed by: _____ Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

1 [Public Works Code - Declaring Illegal Dumping on Public Property a Nuisance, and Providing
2 a Mechanism for Abating and Enforcing that Nuisance]

3 **Ordinance amending the San Francisco Public Works Code by adding Article 25,**
4 **Sections 1500 through 1505 to: 1) declare the illegal dumping of debris and waste**
5 **construction materials or industrial materials, or of more than 100 pounds of any other**
6 **waste, refuse, or debris, on public property to be a public nuisance; 2) authorize**
7 **enforcement by the City Attorney in a civil action; and 3) permit the City and County of**
8 **San Francisco to collect civil penalties, costs of abatement, investigation, and**
9 **attorneys' fees against the individuals or entities responsible for the dumping; and**
10 **making environmental findings.**

11 NOTE: Additions are *single-underline italics Times New Roman*;
12 deletions are ~~*strike-through italics Times New Roman*~~.
13 Board amendment additions are double-underlined;
14 Board amendment deletions are ~~strikethrough-normal~~.

14 Be it ordained by the People of the City and County of San Francisco:

15 Section 1. The San Francisco Public Works Code is hereby amended by adding
16 Article 25, Sections 1500 through 1505, to read as follows:

17
18 **ARTICLE 25: ILLEGAL DUMPING**

19 **SEC. 1500. TITLE.**

20 *This Article shall be known as the "Illegal Dumping Ordinance."*

21
22 **SEC. 1501. PURPOSE AND INTENT.**

23 *The Board of Supervisors finds and declares that:*

24 *(a) Dumping on streets, sidewalks, public rights-of-way, and other public properties within the*
25 *City and County of San Francisco is detrimental to the health, safety, and welfare of the community and*

1 is hereby declared to be a public nuisance. Dumping in public spaces creates urban blight and not
2 only impedes the paths of travel for pedestrian and vehicular traffic and is detrimental to businesses
3 and personal pursuits, but pollutes public spaces with potentially harmful and toxic substances,
4 degrades neighborhoods, and encourages others to unlawfully dispose of other waste and debris, all
5 fostering a disrespect of public property and of the community.

6 (b) Cleaning up and abating unlawfully dumped material on public properties costs the City
7 and County of San Francisco tens of thousands of dollars a year. The City is rarely able to recoup
8 those costs from the individuals and entities who commit the illegal dumps.

9 (c) Because dumping on public properties and rights-of-way is hereby deemed a nuisance,
10 immediate and effective abatement against the parties responsible for the unlawful dumping is essential
11 to deter these illegal acts and may be accomplished through the judicial procedures outlined herein.

12 (d) The City is enacting this legislation pursuant to and in accordance with California
13 Government Code Section 38771, and California Civil Code Sections 3479 and 3480.

14 (e) Nothing in this Article shall be construed to in any way limit the City's right to enforce any
15 other provision of the Municipal Code or state law, or to create a duty or obligation on the part of the
16 City to enforce this Article.

17
18 **SEC. 1502. DEFINITIONS.**

19 Unless the context requires otherwise, the following definitions shall govern the construction of
20 this Article:

21 (a) "City" means the City and County of San Francisco.

22 (b) "Debris and Waste Construction Material" includes any wood, brick, plaster, glass, cement,
23 roofing material, composite, sheet rock, sheet metal, wire, pipe and other materials related to the
24 remodeling, construction or repair of, or the partial or total demolition of, houses, buildings or other
25 structures.

1 (c) "Director" means the Director of the Department of Public Works or his or her designee.

2 (d) "Person" means and includes companies, corporations, limited liability companies, estates,
3 associations, partnerships, trusts, unincorporated associations and one or more individual human
4 beings.

5 (e) "Prevailing Party" has the same meaning as set forth in California Code of Civil Procedure
6 Sec. 1032, or any successor provision. "Prevailing Party" includes the City in actions where the City
7 obtains an injunction and/or civil penalties or other monies under this Article or State law.

8 (f) "Public Property" includes any portion of a street, road, right-of-way, sidewalk, park, lot, or
9 public or other land owned, operated, leased, or maintained by the City and County of San Francisco.

10 (g) "Responsible Party" includes any Person who causes or allows or contributes to or
11 participates in actions which constitute a nuisance under this Article.

12
13 **SEC. 1503. PROHIBITED DUMPING ACTIVITY.**

14 (a) It shall be prohibited for any Person to deposit, leave, place, keep, maintain, or abandon,
15 Debris and Waste Construction Materials, industrial materials, or more than 100 pounds total of any
16 other waste, refuse, or debris on any Public Property without the lawful and express written permission
17 of the City and County of San Francisco.

18 (b) Any activity or action that violates this Article shall be, and is hereby declared, a public
19 nuisance.

20 (c) Nothing in this Article shall be construed to authorize or allow any Person to deposit, leave,
21 place, keep, maintain, or abandon, any other property or materials, in any amount, on any Public
22 Property without the lawful and express written permission of the City and County of San Francisco,
23 other than to deposit trash in an appropriate designated receptacle.

24
25 / / /

1 **SEC. 1504. ABATEMENT.**

2 (a) The Director may require or take any necessary abatement or enforcement action to clean
3 up or contain any material dumped on Public Property, including ordering the Responsible Party to
4 remove and appropriately dispose of the material. The Director may ask any other City department or
5 necessary state agency for assistance in abating any nuisance pursuant to this Article.

6 (b) Any costs or monies expended by the Department of Public Works or any other department
7 of the City and County of San Francisco to abate a nuisance under this Article may be recovered in a
8 civil action as described in Section 1505.

9
10 **SEC. 1505. ENFORCEMENT – INJUNCTIVE RELIEF, CIVIL PENALTIES, COSTS, AND**
11 **ATTORNEYS' FEES.**

12 (a) The City Attorney may enforce the provisions of this Article through a civil action in any
13 court of competent jurisdiction.

14 (b) The City Attorney may apply to any court of competent jurisdiction for an order seeking
15 injunctive relief to abate or remove any nuisance described in this Article, to restrain any Responsible
16 Party from taking any action contrary to the provisions of this Article or to require any Responsible
17 Party to take action to comply with the provisions of this Article or an order by the Director to remove
18 and appropriately dispose of material illegally dumped on Public Property.

19 (c) In any civil court action brought by the City Attorney to enforce this Article in which the
20 City succeeds in obtaining any order from the Court, the City shall be entitled to recover from any and
21 all Responsible Parties all of its costs of investigation, enforcement, abatement, and litigation.

22 (1) The City shall be entitled to recover civil penalties from each and every Responsible
23 Party in an amount that is not less than twice the amount it cost the City to abate the nuisance. Costs
24 to the City to abate the nuisance shall include any personnel, equipment, and other charges incurred by
25 the City related to the investigation, abatement, clean-up, and/or containment of Debris and Waste

1 Construction Materials, industrial materials, or more than 100 pounds of any other waste, refuse, or
2 debris dumped on Public Property. This civil penalties provision is designed to compensate the City
3 for any costs it incurred to investigate and abate the unlawful acts of any Responsible Party and for the
4 ancillary health hazards and inconveniences caused to the City and its residents, rights of way blocked,
5 traffic delays or detours, and any personal or business difficulties suffered from the maintenance of
6 illegally dumped materials on Public Property.

7 (2) The Prevailing Party in any court action to abate a nuisance pursuant to this Article
8 shall be entitled to reasonable attorneys' fees.

9 (d) Nothing in this Article shall be interpreted as restricting or otherwise limiting the
10 enforcement authority conferred upon other City employees or state agencies by other provisions of the
11 Municipal Code or state law.

12
13 **Section 2. Additional Provisions.**

14 (a) **Environmental Findings.** The Planning Department has determined that the
15 actions contemplated in this ordinance are in compliance with the California Environmental
16 Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.). Said determination is on file with the
17 Clerk of the Board of Supervisors in File No. 110222 and is incorporated herein by
18 reference.

19 (b) **Conflict with State or Federal Law.** This ordinance shall be construed so as not
20 to conflict with applicable federal or State laws, rules or regulations. Nothing in this ordinance
21 shall authorize any City agency or department to impose any duties or obligations in conflict
22 with limitations on municipal authority established by State or federal law at the time such
23 agency or department action is taken.

24 (c) **Disclaimer.** In adopting and implementing this ordinance, the City and County of
25 San Francisco is assuming an undertaking only to promote the general welfare. It is not

1 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it
2 is liable in money damages to any person who claims that such breach proximately caused
3 injury.

4 (d) **Severability.** If any of the provisions of this ordinance or the application thereof to
5 any person or circumstance is held invalid, the remainder of those provisions, including the
6 application of such part or provisions to persons or circumstances other than those to which it
7 is held invalid, shall not be affected thereby and shall continue in full force and effect. To this
8 end, the provisions of this Article are severable.

9
10
11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13
14 By:



YVONNE MERE
Deputy City Attorney

LEGISLATIVE DIGEST

[Public Works Code - Declaring Illegal Dumping on Public Property a Nuisance, and Providing a Mechanism for Abating and Enforcing that Nuisance]

Ordinance amending the San Francisco Public Works Code by adding Article 25, Sections 1500 through 1505 to: 1) declare the illegal dumping of debris and waste construction materials or industrial materials, or of more than 100 pounds of any other waste, refuse, or debris, on public property to be a public nuisance; 2) authorize enforcement by the City Attorney in a civil action; and 3) permit the City and County of San Francisco to collect civil penalties, costs of abatement, investigation, and attorneys' fees against the individuals or entities responsible for the dumping; and making environmental findings.

Existing Law

State law authorizes cities to declare particular types of conduct harmful to the public to be nuisances. City law does not currently address illegal dumping as a public nuisance.

Amendments to Current Law

The proposal would amend the Public Works Code to declare illegal dumping on public property to be a public nuisance, where the material involved is debris and waste construction materials or industrial materials in any amount, or more than 100 pounds total of any other waste, refuse, or debris. The ordinance would authorize the Director of Public Works to take any necessary action to clean up or contain any such material dumped on public property, including ordering the responsible party to remove and appropriately dispose of the material.

The City Attorney could also enforce the ordinance through a civil action in court. The City Attorney could seek an injunction to correct or remove any nuisance under the ordinance. The City could also recover from the parties responsible for the illegal dumping civil penalties in an amount not less than twice the City's costs to abate the nuisance, including any personnel, equipment, and other charges incurred by the City, to offset both the City's direct costs and the ancillary health hazards and inconveniences caused by the nuisance, rights of way blocked, traffic delays or detours, and any personal or business difficulties caused by the illegal dumping.

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

March 16, 2011

File No. 110222

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On March 1, 2011, Supervisor Cohen introduced the following proposed legislation:

File No. 110222

Ordinance amending the San Francisco Public Works Code by adding Article 25, Sections 1500 through 1505 to: 1) declare the illegal dumping of debris and waste construction materials or industrial materials, or of more than 100 pounds of any other waste, refuse, or debris, on public property to be a public nuisance; 2) authorize enforcement by the City Attorney in a civil action; and 3) permit the City and County of San Francisco to collect civil penalties, costs of abatement, investigation, and attorneys' fees against the individuals or entities responsible for the dumping; and making environmental findings.

The legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Somera".

By: Alisa Somera, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

*Not a project per CEQA
Guidelines Sections 15060(c)(3)
and 15378.*

*Nannie R. Turrell
March 16, 2011*